



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

Date December 8, 2009

To: Board of Environmental Protection
From: John James, Bureau of Remediation and Waste Management
Re: Public Hearing on proposed Chapters 880 and 881 -- background information concerning the meaning of "child".

On Thursday, December 17, the Board will hold a public hearing on Chapters 880 and 881, proposed new rules implementing the law on Toxic Chemicals in Children's Products [38 MRSA §§1691 through 1699-B].

I write in advance of the hearing to provide background on the meaning of the term "child" as used in the law. At your meeting of November 19, Board member Ehrenfeld observed that the term "child" is not defined under the law or the proposed rules.

The law resulted from the combination of two competing two bills—LDs 2048 and 2210, 123rd Legislature. Although neither bill defined or specified an age threshold for children, the absence of a definition did not generate discussion during public meetings on the bills before the Legislature's Committee on Natural Resources. At least, I do not recall any such discussion nor could I find any evidence in our legislative file that the matter was discussed.

After the bill passed out of committee, an amendment was introduced during floor debate that would have, among other things, defined "children" to mean "children under 3." The amendment was defeated. The 3-year age cut-off also was put forward in a separate floor amendment exempting food and beverage packaging from the law. That amendment was adopted and is codified under 38 MRSA §1697(8).

Since your November 19th meeting, I have examined the use of the terms "child", "children" and children's product" in other laws and jurisdictions. Summarized below are some findings from my research that may be of use if the issue is raised in your deliberations on chapter 880.

- **Maine law**

Maine's rules of statutory construction at 1 MRSA §72, sub-§2-A, define "child or children" as "a person who has not attained the age of 18 years." The rules provide that this definition must be used in the construction of statutes "unless such construction is inconsistent with the plain meaning of the enactment, the context otherwise requires or definitions otherwise provide."

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The board presumably could exercise its rulemaking authority to override this default construction by otherwise defining the term child in proposed chapter 880. As of this writing, however, no evidence has been presented to suggest that a different age cut-off would better serve the purpose of the law.

Under Maine's Lead Poisoning Control Act, "child" is defined as a person up to six for the purposes the abatement of lead-based paint hazards in housing and a person under 12 for the purpose of restrictions on lead-containing children's products. See 22 MRSA §§1315 and 1316-A.

- **U.S. Environmental Protection Agency**

In 1997, the U.S. EPA established an Office of Children's Health Protection (OCHP) to support implementation of President Clinton's *Executive Order on the Protection of Children from Environmental Health Risks and Safety Risks*. The order requires all federal agencies to assign a high priority to addressing health and safety risks to children and ensure that agency standards take into account special risks to children.

The office website (<http://yosemite.epa.gov/ochp/ochpweb.nsf/content/homepage.htm>) has links to a wealth of information demonstrating that children are different from adults and may be more vulnerable to chemical exposure. Children may be more vulnerable because:

- Their neurological, immunological, digestive and other bodily systems are still developing and more easily harmed;
- Children eat, drink and breathe more in proportion to their body size; and
- Their behavior patterns—such as crawling and placing objects in their mouths—can expose them more to chemicals.

Because of these characteristics, children may not be sufficiently protected by regulatory standards that are set based on risks to adults. Earlier this month, in testimony before the U.S. Senate Committee on the Environmental and Public Works, the Director of the National Institute of Environmental Health Sciences (NIEHS) said that "research has revealed the heightened vulnerability of fetal, infant and child developmental processes to disruption from relatively low doses of certain chemicals."

Although I did not find a definition of "child" on the OCHP website, there are suggestions that the agency considers children to include persons up to the age of 21. For example, the office's *Guidance on Selecting Age Groups for Monitoring and Assessing Childhood Exposures to Environmental Contaminants* (2005) recommends use of the following age groups:

- Age groups less than 12 months old include: birth to <1 month, 1 to <3 months, 3 to <6 months, and 6 to <12 months.
- Age groups greater than 12 months old include: 1 to <2 years, 2 to <3 years, 3 to <6 years, 6 to <11 years, 11 to <16 years, and 16 to <21 years [emphasis added].

Further, the National Child's Study—a joint effort of the OCHP, NIEHS, the National Institute of Child Health and Development and the Center for Disease Control and Prevention—is examining the effects of environmental influence on the health and development of more than 100,000 children, following them from before birth *until age 21* [emphasis added].

- **U.S. Consumer Product Safety Commission**

The term “children’s product” is defined under the U.S. Consumer Product Safety Act as “a consumer product designed or intended primarily for children 12 years of age or younger. *See* 15 USC 2052(a)(16).

- **Other U.S. states**

Washington and Minnesota are among the few states in addition to Maine that have undertaken to regulate the use of chemicals in children’s products.

Washington law requires the state Department of Ecology to identify priority chemicals of high concern for children after considering a child’s or developing fetus’s potential for exposure to each chemical. Child is not defined or age limited under the Washington law but an age limitation is used in the definition of “children’s product.” Children’s product is defined to include: cosmetics and jewelry *marketed to children under 12*; toys; child car seats; and products designed or intended to help a child with sucking or teething, to facilitate sleep, relaxation or the feeding of a child, or to be worn as clothing by children. *See* Revised Code of Washington, Title 70, chapter 240.

Minnesota’s law defines child to mean “a person under 12 years of age.” The Minnesota law closely tracks Maine’s law with respect to how chemicals of high concern and priority chemicals are identified. The Minnesota law differs from the Maine law in that, in Minnesota, the identification of priority chemicals does not appear to have any regulatory implications. *See* Minnesota Statutes, chapter 116, sections 9401-9407.

- *The American Heritage Dictionary of the English Language* (4th ed., 2009)

child *n.*

1 a: a person between birth and puberty **b:** a person who has not attained maturity or the age of legal majority **c:** an unborn infant; a fetus **d:** an infant; a baby.

- *Blacks Law Dictionary* (7th ed., 1999)

child. 1. At common law, a person who has not reached the age of 14, though the age now varies from jurisdiction to jurisdiction.¹ **2.** A boy or girl; a young person. **3.** A son or daughter. **4.** A baby or fetus. See JUVENILE; MINOR

minor, n. A person who has not reached full legal age; a child or juvenile.

- *Wikipedia, the Free Encyclopedia* (downloaded December 1, 2009)

A **child** (plural: **children**) is a human between the stages of birth and puberty. The legal definition of "child" generally refers to a minor, otherwise known as a person younger than the age of majority.

The United Nations Convention on the Rights of the Child defines a child as "a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier." Biologically, a child is anyone in the developmental stage of childhood, between infancy and adulthood.

¹ Maine law at 1 MRSA §73 provides:

"The common law rule that a person is a minor to the age of 20 is abrogated and persons 18 years of age or over are declared to be of majority for all purposes."

"Minor" is defined under 1 MRSA §72, sub-§11-A, as "any person who has not attained the age of 18."